

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

EMMIS OPERATING COMPANY,)	
Plaintiff,)	
)	
vs.)	1:06-cv-0920-LJM-WTL
)	
CBS RADIO, INC.,)	
Defendant.)	

ORDER ON DEFENDANT'S MOTION TO DECLARE WAIVER OF PRIVILEGE

The facts of this matter are not in dispute. Counsel for plaintiff, Emmis Operating Co. (“Emmis”), in response to a case management provision, sent a facsimile to counsel for defendant, CBS Radio, Inc. (“CBS”). Instead of the intended Statement of Special Damages and Settlement Demand, the facsimile included a letter that obviously contained privileged work product material. When they received it, CBS lawyers reviewed the letter. The next day, CBS lawyers notified Emmis lawyers that they had received the letter and that CBS did not consider it privileged. Emmis disagreed that facsimile of the letter to CBS lawyers waived Emmis’ privilege. CBS then brought the dispute to the Court.

The parties entered into a Stipulated Protective Order early in the litigation that was in effect at the time of the inadvertent transmission. The scope of the Stipulated Protective Order is broadly defined in paragraph 2 to “govern information disclosed during pre-trial proceedings in this action including but not limited to documents, interrogatory answers, deposition testimony, responses to other discovery demands, as well as copies, notes, abstracts or summaries of that information.” The parties now disagree over whether this language is broad enough to include an inadvertently

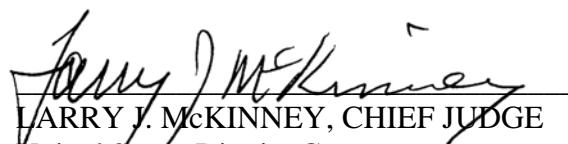
disclosed letter produced, not for discovery purposes, but for purposes of compliance with the case management order.

It is this Court's view that the Stipulated Protective Order is broad enough to embrace the letter that is the subject of this controversy. The letter represents information inadvertently disclosed. Although there are reasonable arguments that the language of the Stipulated Protective Order does not literally apply to these facts, the Stipulated Protective Order sets a tone of entitlement, cooperation and respect among the parties and the lawyers on both sides that justifies its application in these circumstances. Certainly CBS is not prejudiced by a declaration that the subject letter is privileged.

CONCLUSION

For these reasons defendant's, CBS Radio, Inc., Motion to Declare Waiver of Privilege is **DENIED**.

IT IS SO ORDERED this 8th day of August, 2007.



LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distributed electronically to:

Blake J. Burgan
SOMMER BARNARD ATTORNEYS, PC
bburgan@sommerbarnard.com

Michael C. Terrell
SOMMER BARNARD ATTORNEYS, PC
mterrell@sommerbarnard.com

Thomas L. Davis
LOCKE REYNOLDS LLP
tdavis@locke.com

James Dimos
LOCKE REYNOLDS LLP
jdimos@locke.com

Joel E. Tragesser
LOCKE REYNOLDS LLP
jtragesser@locke.com